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April 5, 2007

**BY ELECTRONIC FILING**

The Honorable Gregory M. Sleet  
United States District Court  
District of Delaware  
844 King Street  
J. Caleb Boggs Federal Building  
Lockbox 19  
Wilmington, DE 19801

**Re: Estate of Harry Smith, III, et al. v. John Ciritella, et al.,  
C.A. No. 04-1254-GMS**

Dear Judge Sleet:

I write with respect to the preliminary jury instructions submitted by Plaintiffs this afternoon. Defendants do not seek to delete any of the language presently contained in the preliminary jury instructions, but Defendants contend that the preliminary instructions are incomplete and require additional language to address what Plaintiffs must prove at trial. Plaintiffs were not willing to include a bolded section reflecting Defendants' proposed additional language; as a result, Defendants' proposed preliminary jury instructions are enclosed herewith. The bold reflects Defendants' proposed addition. The only difference between Defendants' proposal and the version submitted by Plaintiffs earlier this afternoon is the addition of certain language in the Summary of Applicable Law. The source of this language is the Third Circuit Pattern Jury Instructions (4.1, 4.3, 4.9.1). Without the inclusion of this language, the jury will have no understanding of what Plaintiffs must prove at trial. For this reason, Defendants respectfully request that the Court use the enclosed preliminary jury instructions.

If Your Honor should have any questions or concerns, undersigned counsel remains available at the Court's convenience.

Respectfully submitted,



Steven J. Fineman (#4025)

SJF/ll

Enclosure

cc: Kester I.H. Crosse, Esquire (w/e) (By Hand Delivery)  
Anne T. Sulton, Esquire (By Electronic Mail)